

## **GENERAL MEANS OF ENFORCEMENT**

**5502**

(No. 6 January 1999)

The general means of enforcement of the Forest Practice Act, forest practice rules, and the other related regulations are as follows:

- Prosecution as a misdemeanor through the judicial court (includes associated fire laws).
- Discipline of the timber operator through license denial, suspension, or revocation.
- Board of Forestry corrective action (delegated to the Director).
- Preliminary injunction.
- Discipline by a Registered Professional Forester (RPF).
- Administrative action (personal discussion with the timber owner, timber operator or agent, sending or handing of inspection reports accompanied by violation notices, warning letters, etc.).

## **MEANS OF ENFORCEMENT**

**5502.1**

(No. 6 January 1999)

Normally, when a substantive violation is found during a forest practice inspection, the inspecting officer will make a decision or recommendation as to the enforcement means to be used. Informal administrative action alone may be judged sufficient for less substantive violations, unless repetition of the violation by the same person is involved. In a case where corrective action is needed, it should be initiated in addition to the misdemeanor action.

On more substantive violations, it may be desirable to choose a misdemeanor action and a recommendation for corrective action, license discipline, or both corrective action and license discipline. The choice of misdemeanor action and corrective action or license discipline should be made after considering the nature of the violation, the attitude of the District Attorney and the court involved, and the means likely to obtain the most positive and complete corrective action to prevent repetition of the violation. The preliminary injunction should be sought in those cases where continued operation threatens to result in:

- serious violations,
- rapid, irreparable damage to the forest, soil, water, or other resources (especially water) where there is great public sensitivity to threatened violations,
- violations beginning or continuing to occur.

The violation(s) need not have occurred before seeking injunctive action, if a serious threat exists.

In case of serious or extensive violations, the forest officer should consult his/her supervisor. Consultation should be extended to include the regional staff and Director's staff, if warranted, to identify the most effective and appropriate choice of enforcement.

The Director's staff is always ready to assist with consultation or problems either in the initial stage or in a later development. However, a case file report, LE-80, or supporting documents for misdemeanor actions should not be sent to the Director's office unless the region is requesting advice or staff assistance, an area of special sensitivity is involved, or there is some other particular reason why the Director's office should have this material.

## **CDF EMPLOYEE LIABILITY**

**5502.2**

(No. 6 January 1999)

An employee who has a claim filed against him/her for alleged actions or omissions performed in the course of his/her state employment is entitled to be represented by the Attorney General's office under the terms of the Tort Claims Act, Sections 800 et seq., provided the following is true:

- The action or omission occurred within the scope of his/her employment.
- Timely request for assistance is made.
- The employee cooperates reasonably and in good faith in the defense against the claim (see GC Section 825).

Not only will the state defend the employee, but also the state will pay any judgments against the employee or the state, with one exception: the state cannot pay punitive damages won by a claimant against an individual state employee. Thus, where punitive damages are sought, the employee will be so advised and given the opportunity to retain private defense counsel. Nevertheless, the state will defend the employee in such a case if the employee so wishes. Punitive damages are rarely awarded unless there has been shocking occurrence.

"Scope of Employment" is quite liberally interpreted to include almost any action or omission occurring while an employee is doing his/her state job. It would be necessary to show that a state employee had in bad faith taken a deliberate, wanton action to hurt another person for motives unrelated to the employee's state duties, to result in a ruling that the action was not within the scope of employment. Ordinary negligence or honest errors in the performance of state duties are rarely sufficient in themselves for such a ruling, even where the actions of the employee result in discipline by the employer.

## **DOCUMENTING FAILURES OF REGISTERED PROFESSIONAL FORESTER (RPF) RESPONSIBILITY**

**5502.3**

(No. 6 January 1999)

A RPF has unique responsibilities to protect both the environment and the public interest, as well as landowner property rights. The Forest Practice Act (FPA) requires that Timber Harvest Plans (THPs) be prepared by a RPF. This includes consideration of feasible alternatives according to 14 CCR 898, et seq., and otherwise preparing a professionally adequate THP (14 CCR 1035.1). The same laws and regulations also apply to Emergency Notices and to Exemptions when prepared by a RPF, except for specifically excluded provisions.

In a THP a RPF may propose allowed alternatives or exceptions to specific forest practice rules. The RPF may also declare a supervisory capacity over logging operations, and each RPF employed by the owner or timber operator is required by PRC 4583.2 to report to the owner or operator if there are any deviations from a THP which threatens the attainment of conservation standards of the act or rules. The Department RPF also must evaluate the adequacy of the THP (14 CCR 898.1).

The RPF preparing a THP must comply (14 CCR 896) with numerous code sections in law and regulations. A list of these code sections requiring RPF responsibility is available from Foresters Licensing. [Section 5446.3](#) of this Procedures Manual addresses the criteria for determining whether plans are acceptable for filing. A THP must be accurate and complete (14 CCR 1035.1) upon signing and affixing the RPF number (14 CCR 1602.1). In addition, there are many code sections that state the RPF "shall" do something, and as a professional standard, and the RPF should know what is necessary.

Letters accompanying returned plans create documentation and provide sufficient warning preceding a Notice of Violation for subsequent failures. Differences of professional judgment which are within bounds of prudent conduct, or differing opinions of mitigation measures do not constitute licensee failures and do not warrant the following actions:

1. For errors and omissions, such as those which result in return of the plan or are discovered during plan review, Peace Officers or Public Officers may, using appropriate discretion, write a notice of violation on the plan(s) under review. Prior to writing the Notice of Violation, the RPF shall be contacted, the issues explained and discussed and the RPF clearly informed that the Notice of Violation is forthcoming.

Notices of Violation are for lesser, correctable failures to comply with the law and rules in THP or Exemption/Emergency Notice preparation (14 CCR 1035.1) and related documents or responsibilities. Because the RPF is responsible upon signing a document (14 CCR 1602.1), this applies whether or not the plan or document was accepted for filing. If such errors or omissions are discovered in the review process, the team chairperson or qualified designee will decide whether to issue a Notice of Violation.

Notices of Violation to the RPF may also be appropriate where violations have occurred on a timber operation and the RPF has some responsibility for the oversight or conduct of those timber operations.

2. If errors or omissions are glaring or blatant, OR when the RPF displays a documented pattern of inaccurate and incomplete plans, a citation or a license complaint may be written following the policy detailed in Section 5502.4. "Glaring" is defined by the American Heritage Dictionary, College and Second Edition, as conspicuous, and stands out obtrusively (undesirably noticeable). "Blatant" is also defined as conspicuous, outstandingly bad or erroneous; the conspicuousness is what gives cause for concern.

The timing on previous deficient plans may make them not appropriate for documenting a pattern. The most appropriate or current THP(s) should be used to "trigger" enforcement action.

The application of peace officer discretion to select the appropriate level of enforcement complements the reporting process. The Department's compliance with these guidelines does not result in automatic license disciplinary action. As a matter of standard practice, the Department will submit the following to Foresters Licensing:

1. Any completed personnel Adverse Action related to RPF responsibilities, including appeals and completed decisions, against a CDF employee.

2. All citations issued for failures in RPF responsibility. These shall be mailed, at the time of issue, to the Deputy Chief for Forest Practice Enforcement and Litigation at Sacramento Headquarters, who will forward them to Foresters Licensing. The copy of the citation will be followed by the decisions of the District Attorney or judges, at the conclusion of the case, along with a copy of the LE-30 file. This includes citations issued for non-THP matters, such as errors in CFIP planning, etc. (authority in PRC Section 779, and PRC 759 with 14 CCR 1062.1), and citations issued for practicing forestry without a license (authority PRC, 779, and PRC 766 with CCR 1602).

The Department is responsible for enforcing codes applying to management of California's wildlands, and Foresters Licensing is required to investigate (PRC, Section 775) any act which comes under the grounds for disciplinary action, (PRC, Section 778 and Policy #7 available from Foresters Licensing). In this process, expert witnesses are used to weigh RPF actions against what is deemed prudent conduct among the profession. With recommendations from the Professional Foresters Examining Committee (PFEC) the Executive Officer of Foresters Licensing, has the sole jurisdiction to determine whether or not to pursue discipline. Extenuating or aggravated circumstances cannot be used to excuse a failure, but may affect the extent of discipline imposed from the disciplinary process (Policy #8).

## **CITING OR FILING A COMPLAINT AGAINST A RPF**

**5502.4**

(No. 6 January 1999)

A process of notification and discussion with the RPF should be followed before considering the submission of a licensing complaint or citing the RPF. Initial notification using the documentation process outlined in procedures Section 5502.3 includes THP return letters and mitigation letters pointing out alleged failures, Preharvest Inspection Reports and violation notices. Follow-up notification includes correspondence or personal discussion with the RPF outlining the alleged professional failures and their significance. It must be made clear that continued failures could result in the filing of a license complaint or issuance of a citation. All of the above actions should be well documented for future reference.

However, where a single problem or series of problems often closely spaced in time are very significant in nature, a complaint or citation should be considered without going through the full notification process.

In those cases where, in spite of efforts to inform the RPF of the problems, the RPF continues to fail, a license complaint should be filed. A citation may be appropriate in unusual or blatant circumstances, but the courts frequently do not want to handle professional practice issues. In those cases where a citation is issued or misdemeanor action is taken, reporting the decisions of the District Attorney and/or courts as required by Procedures Section 5502.3 that might negate the need to file a separate licensing complaint.

The statute of limitations for actions subject to discipline is five years from the date of occurrence to the date that Foresters Licensing files the Accusation.

All Foresters licensing matters shall be handled as confidential (Government Code, sections 6254 (f) and 11183). The disciplined RPF's identity is publicly announced only if the Board's decision involves suspension or revocation. The identity of the person(s) filing the complaint(s) is protected by the Evidence Code, section 1041.

Anyone may file a complaint regarding failures of RPF responsibility by any RPF with the Board of Forestry by letter, or by using the Board's Report of Complaint form (not available), which can be obtained from Professional Foresters Registration. Either method should state as many specifics about the complaint as possible, and include documentation when available. The complaint process is described in Policy #8, which is available from Foresters Licensing.

CDF employees who are considering submitting a complaint against any RPF based on information obtained during the course of state employment must seek the advice and assistance of the Deputy Chief for Forest Practice Enforcement and Litigation in Sacramento Headquarters. This will ensure consistency, and any questions about the process or significance of the issues prompting the complaint will be answered. When finalized, the complaint will be submitted in an envelope clearly marked "confidential" to the Enforcement and Litigation Deputy Chief for transmittal to the Board of Forestry. A CDF employee acting in an official capacity has conditional representation in lawsuits resulting from the filing of a complaint (Government Code, Section 825).

A complaint against a RPF's failure of responsibility by a CDF employee identified outside of his/her state employment duties must be pursued on the employee's own time, and should be sent directly to the Board of Forestry. In such cases, the employee is not covered by Government Code, Section 825.

A RPF, whether employed by the state or not, is subject to discipline by the Board. No preferential status shall be conferred upon a state-employed RPF because of the Codified relationship between CDF and the Board of Forestry.

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